IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14077 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKORBHAI DAHYABHAI NAIK & 4 - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR RN SHAH for Petitioner(s) : 1 - 5.
MR HUKUM SINGH, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/02/2007

ORAL JUDGMENT

1. Mr. R.N. Shah, learned counsel for the petitioners; Mr. Hukum Singh, learned AGP for the

respondents. Heard.

2. By this writ application, the present petitioners seek to challenge the order dated 30.8.93 passed in Ceiling Appeal No. 11/93 by the learned Deputy Collector and the order dated 10.12.93 passed by the Gujarat Revenue Tribunal in Revision Application No. 273/93.

3. The short facts leading to the present writ application are that the petitioners had submitted form no. 3 as required under the provisions of the Agricultural Lands Ceiling Act with regard to holding of the agricultural land at village Rana, Taluka-Mahuva, District-Valsad. The Mamlatdar, after hearing the parties in Ceiling Case No. 130/76 vide his order dated 25.4.76, held that the petitioners were possessed of 4 acres and 9 gunthas in excess of the ceiling limit. The said order came to be challenged before the Deputy Collector, who vide his order dated 5.1.81 allowed the appeal and remanded the matter to the Mamlatdar for deciding the matter afresh with a clear order that question of conversion and classification of the

land should be taken into consideration. During pendency of the said ceiling matter after its remand, the government issued a circular that in accordance with Section 10[2] of the Act, land belonging to the spouse or children of the holder within the same village or Taluka should be clubbed into the original holding. It was found that the petitioner's wife had some share in the land and was recorded as joint owner with her father Gulabbhai. The Mamlatdar held that the petitioner's wife had 50% share in the said land which would come down to 7 acres and 34 gunthas and the said land will have to be clubbed with the petitioner's holdings. The Mamlatdar, again decided the matter and held that the petitioner would be entitled to five units; one for the petitioner, three for the major sons and one for the mother and as the entitlement would be 180 acres, the total holding even after clubbing the share of the wife would be 163 acres, the petitioners could not be held to be in possession of the excess land. Being aggrieved by the said order dated 3.6.92, the Deputy Mamlatdar, Mahuva,

preferred Ceiling Appeal No. 11/93 on 16th July, 1993. The appeal was filed after a long delay. A question was raised before the appellate forum, but without even appreciating that the appeal was hopelessly barred by time, the appellate court simply held that there was nothing on record to show that the order passed by the Mamlatdar was brought to the notice of the Deputy Mamlatdar within reasonable time and proceeded with the final judgment. It ultimately held that as the wife's share was included in the husband's holding, the property could not be taken to be ancestral property and under the circumstances, mother of the petitioner would not be entitled to one unit. It accordingly, held so and after holding so, remanded the matter back to the Mamlatdar for redeciding the matter in relation to the conversion and the classification. Being aggrieved by the appellate order, the petitioners took up the matter before the Revenue Tribunal. The Revenue Tribunal, however, observed that the order passed by the appellate authority was absolutely justified and that the total holding

lost its character of the joint Hindu Family property or ancestral property.

4. Being aggrieved by the said orders, the petitioners are before this Court.

5. Shri R.N. Shah, learned counsel for the petitioners submits that delay in filing the appeal was not at all considered and in any case, there was no good reason for the Mamlatdar/Deputy Mamlatdar to say that he had no knowledge about the order passed by the Mamlatdar. According to him, the delay was fatal and the appeal could not be entertained. He also submits that if on 1.4.76, the mother was alive and the property was ancestral property, then simply because of clubbing of wife's share into the holding of the male holder, the property would not lose its character of ancestral property or joint Hindu Family property.

6. Shri Hukum Singh, learned AGP, on the other hand submits that the learned appellate court was absolutely justified in exercising its discretion in condoning the delay and was also justified in holding that after clubbing the land owned by the

wife of the holder, the property lost its character and could not be taken to be ancestral property.

7. It is not in dispute before me that the judgment in the matter was delivered on 3.4.92 and the appeal came to be filed on 16.7.93. Limitation for filing an appeal is 30 days and if an appeal is filed beyond 30 days excluding the days required for obtaining certified copy, the party filing the delayed appeal is required to show sufficient cause to the appellate authority for condonation of delay. In the present matter, it does not appear that application for condonation of delay was filed. It would clearly appear that the appellate authority took up the argument very cursorily and failed to appreciate that the Deputy Mamlatdar would not be allowed to say that he had no knowledge about the order passed by the Mamlatdar. Only reason given by the appellate authority not to dismiss the appeal on the question of limitation is that there was nothing on record to show that the Deputy Mamlatdar received the order right in time. I am

sorry to record that the appellate forum was trying to put a cart before the horse. Burden was upon the appellant to show that he had sufficient cause in his favour for filing an appeal late. Instead, the appellate authority started throwing burden upon the shoulder of the respondent to prove that the appellant received copy well within time. In the opinion of this Court, there was no good ground for condonation of delay. The appellate authority acted illegally and contrary to law and on that ground, the appeal deserved to be dismissed.

8. So far as the merits of the case are concerned, it is to be seen that in accordance with the Hindu Succession Act and the provisions of the Agricultural Lands Ceiling Act, a mother would be entitled to one unit in the holding if the property is ancestral. In the present case, if because of inclusion of very small piece of land belonging to the spouse of the male holder, the entire land if is held to have changed its character, then it would amount to denying rights in favour of the mother, who otherwise is

entitled to one unit. So far as the case of the mother is concerned, she would be entitled to one unit from the total land owned by the male holder without inclusion of the share of the wife. Share of the wife is to be included to calculate the extent of the land and not to deny the rights of the parties. In the present matter, the appellate authority so also the Revenue Tribunal erred in not appreciating the provisions of Sections 6 and 8 of the Hindu Succession Act. Section 6 clearly provides that if a male holder dies leaving behind him a woman entitled to succeed, then property would be succeeded under the law of Succession and not otherwise. If after the death of the Karta, certain legal heirs are available, then there would be a deemed partition and each person would be entitled to a share in the property. Ceiling Act, for the purposes of inclusion would not override the authorities, powers and rights of the holders who are otherwise entitled to one unit. In the opinion of this Court, the appellate authority so also the Tribunal went wrong in holding that because

of the inclusion of 7 acres of land belonging to the petitioner's wife, the entire land changed its character.

9. For the reasons aforesaid, the petition deserves to and is accordingly allowed. The orders passed by the Revenue Tribunal and the appellate authority are hereby quashed and set aside and the orders passed by the Mamlatdar are restored. Rule is made absolute. No costs.

[R.S. GARG, J.]

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